



**City of Kingston
Report to Council
Report Number 20-074**

To: Mayor and Members of Council
From: John Bolognone, City Clerk
Resource Staff: None
Date of Meeting: February 18, 2020
Subject: Transmittal of Report from Principles Integrity – Complaint Filed
Against a Member of Council

Council Strategic Plan Alignment:

Theme: Corporate business

Goal: See above

Executive Summary:

On September 19, 2017 Council appointed Principles Integrity as the City's Integrity Commissioner for a period of four years commencing November 1, 2017. The contract with Principles Integrity requires the Integrity Commissioner to be impartial and neutral and perform all duties skillfully, competently, independently, and in accordance with all applicable law. One of the many roles of the Integrity Commissioner is to conduct enquiries in response to a complaint regarding whether a Member has contravened the Code of Conduct, City policies, procedures, protocols and rules relating to ethical conduct of Members or the Municipal Conflict of Interest Act. The Integrity Commissioner is accountable to and reports directly to Council.

The "Councillor Stroud Code of Conduct Recommendation Report" prepared by Principles Integrity is attached as Exhibit "A".

Principles Integrity will be in attendance at the Council to answer any questions of Council.

Recommendation:

That Council receive the "Complaints under Code of Conduct Respecting Councillor Stroud Recommendation Report", submitted by Principles Integrity, dated February 6, 2020 attached as

February 18, 2020

Page **2** of **5**

Exhibit "A" to Report Number 20-074 and give consideration to the recommendations contained therein.

February 18, 2020

Page 3 of 5

Authorizing Signatures:

ORIGINAL SIGNED BY
CITY CLERK

John Bolognone, City Clerk

Consultation with the following Members of the Corporate Management Team:

Paige Agnew, Commissioner, Community Services	Not required
Peter Huigenbos, Commissioner, Business, Environment & Projects	Not required
Lanie Hurdle, Chief Administrative Officer	Not required
Brad Joyce, Acting Commissioner, Corporate Services	Not required
Jim Keech, President & CEO, Utilities Kingston	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required
Sheila Kidd, Commissioner, Transportation & Public Works	Not required

February 18, 2020

Page 4 of 5

Options/Discussion:**Purpose**

The purpose of this report is to transmit to Council the Integrity Commissioner's "Complaints under Code of Conduct Respecting Councillor Stroud Recommendation Report", submitted by Principles Integrity, dated February 6, 2020

Background / Discussion

Several complaints were filed in the City Clerk's Department against Councillor Peter Stroud between October 17 and 31, 2019, arising out of an incident involving a Kingston Transit bus in June 2019, and a social; media post (tweet) authored by the respondent Councillor. The complaints were subsequently forwarded to Principles Integrity for initial classification to determine if the matter was, on its face, a complaint with respect to non-compliance with the Code of Conduct.

The Integrity Commissioner is entitled to establish such procedures, practices, protocols and policies to support the performance of the Integrity Commissioner's duties in a manner which best serve the public interest.

On February 6, 2020, the Recommendation Report was forwarded by Principles Integrity to the City Clerk with direction that it placed on the next regular Council agenda for consideration. Council must consider the report and may accept or refuse the recommendations set out in the report and accept or vary sanctions contained in the report.

A copy of the Recommendation Report submitted by Principles Integrity is attached as Exhibit A to Report Number 20-074.

Existing Policy/By-Law:

Municipal Act, 2001, as amended – Section 233.3 (appointment of Integrity Commissioner)

Notice Provisions:

None

Accessibility Considerations:

None

Financial Considerations:

There are no Financial Considerations with this report. Principles Integrity is under contract with the City until October 31, 2021.

February 18, 2020

Page 5 of 5

Contacts:

John Bolognone, City Clerk, 613-546-4291 extension 1247

Other City of Kingston Staff Consulted:

None

Exhibits Attached:

Exhibit A – “Complaints under Code of Conduct Respecting Councillor Stroud Recommendation Report”, submitted by Principles Integrity, dated February 6, 2020

Principles
Integrity

City of Kingston

Complaints under Code of Conduct Respecting Councillor Stroud

Recommendation Report

February 6, 2020

Introductory Comments

- [1] Principles *Integrity* was appointed the Integrity Commissioner for the City of Kingston effective November 1, 2017 by the adoption of Report Number 17-266 on September 19, 2017. We are also privileged to serve as Integrity Commissioner for a number of other Ontario municipalities. The operating philosophy which guides us in our work with all of our client municipalities is this:

The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an integrity commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.

- [2] The City of Kingston has as part of its ethical framework a Code of Conduct which is the policy touchstone underlying the assessments conducted in this report. It represents the standard of conduct against which all members of Council are to be measured when there is an allegation of breach of the ethical responsibilities established under the Code of Conduct. The review mechanism contemplated by the Code, one which is required in all Ontario municipalities, is an inquiry/complaints process administered by an integrity commissioner.
- [3] Integrity commissioners carry out a range of functions for municipalities (and their local boards). They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members of council and outreach for members of the community. One of the most important functions is the provision of advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that

Principles *Integrity*

a person has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make recommendations, including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.

- [4] It is important that this broad range of functions be mentioned at the outset of this investigation report. Our goal, as stated in our operating philosophy, is to help members of the City of Kingston community, indeed the broader municipal sector and the public, to appreciate that elected and appointed representatives generally carry out their functions with integrity. In cases where they do not, there is a proper process in place to fairly assess the facts and, if necessary, recommend appropriate sanctions. In every case, including this one, the highest objective is to make recommendations that serve the public interest, if there are recommendations to be made.
- [5] Our role differs from other 'adjudicators' whose responsibilities generally focus, to state it colloquially, on making findings of fact and fault. While that is a necessary component when allegations are made, it is not the only component.
- [6] Our operating philosophy dictates the format of this report. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we have done that. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.
- [7] In this regard, we have assessed the information fairly, in an independent and neutral manner, and have provided an opportunity to the respondent Councillor to respond to the allegations, and to review and provide comment on the preliminary findings.

The Complaints

- [8] This Report responds to several complaints we received against Councillor Stroud between October 17 and 31, 2019 arising out an incident involving a Kingston Transit bus in June, 2019 and a social media post (tweet) authored by the respondent Councillor.
- [9] The complaints can be summarized as follows:
- The Councillor blocked a Kingston Transit bus, banged on the windshield demanding entry for his son, yelled at the driver, and effectively obstructed its passage for several minutes

Principles *Integrity*

- The Councillor has engaged in social media (tweets), criticizing staff, including Kingston Police, in particular, a tweet regarding a police car parked in a bike lane; it is alleged that these public criticisms represent a pattern of behaviour that amounts to bullying and intimidation.

[10] We have determined that the public interest is best served by consolidating the complaints in this investigation into this single report. Not only does this help focus on broader-based issues and allows for consolidated recommendations, it is more cost-effective for the Town.

[11] The identity of the complainants is not disclosed in this Report as we saw no public interest purpose which would be served by such disclosure.

Process Followed for this Investigation

[12] In conducting this investigation, Principles *Integrity* applied the principles of procedural fairness and was guided by the complaint process set out under the Code of Conduct.

[13] This fair and balanced process includes the following elements:

- Reviewing the complaints to determine whether they are within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the complaints should be restated or narrowed, where this better reflects the public interest
- Notifying the Respondent, meeting with him, and providing him with an opportunity to respond in full to the allegations
- Reviewing the Code of Conduct and other documentation including emails, policies, internet postings, and reviewing video of the transit incident
- Conducting interviews of persons with information relevant to the complaints
- Providing the Respondent with the opportunity to review and provide comments to the Integrity Commissioner's Preliminary Findings Report.

Principles *Integrity*

Applicable Code of Conduct provisions and their Interpretation:

[14] The relevant provisions of the City of Kingston's Member Code of Conduct, are as follows:

2.0 Statement of Principles

2.1 This Code of Conduct is intended to set a high standard of conduct for Members of Council, in order to provide good governance and a high level of public confidence in the administration for the City.

2.2 The following key statements of principles are intended to guide Members and assist with the interpretation of the Code of Conduct:

- Members shall serve the public in a conscientious and diligent manner;
- Members shall act with integrity and avoid the improper use of the influence of their office;
- Members shall always act and are expected to perform their functions with integrity, accountability and transparency, and shall avoid the improper use of influence of their office...;
- Members shall perform their duties and arrange their private affairs in a manner that promotes public confidence and will bear public scrutiny;
- Members will uphold the letter and spirit of the laws of Canada, Ontario and the laws and policies adopted by Council.

5.1 In carrying out their duties, Members are expected to:

- (a) make every effort to act with good faith and care;
- (c) seek to advance the public interest with honesty;
- (d) refrain from making statements known to be false or with the intent to mislead Council or the public;

6.3 Members shall respect the role of staff in the administration of the business affairs of the City and in doing so comply with the City's Respect in the Workplace Policy. Members shall respect that:

- (b) staff work within the administration of justice and Members must not make requests or statements or take actions which may be construed as an attempt to influence the independent administration of justice and, therefore, Members shall not

Principles *Integrity*

attempt to intimidate, threaten, or influence any staff members from carrying out that person's duties, including any duty to disclose improper activity;

- 10.1 This Code of Conduct is intended to set a high standard of conduct for Members of Council, in order to provide good governance and a high level of public confidence in the administration for the City.

Summary of Findings

- [15] We find that the Councillor exhibited a callous disregard for the safety and well-being of others who were impacted by his actions during the event, including by disrupting and detaining the bus and its passengers on their route.
- [16] We find that this conduct constitutes a breach of the Code of Conduct as conduct and behaviour which falls well short of the 'high standard of conduct' expected of Members of Council, and fails to 'promote public confidence and bear public scrutiny'.
- [17] We find that the Councillor's conduct, aggressively blocking the bus, pounding on the windshield and yelling at the driver, represented an "attempt to intimidate, threaten, or influence" the bus operator in proper operation of the bus.
- [18] We find that the this constitutes a breach of the Code of Conduct.
- [19] While inappropriate, we do not find that the single tweet about the police car parked in a bike lane amounts to bullying or intimidation.

Background and Context

- [20] On Sunday June 23, 2019, Councillor Stroud was riding his bicycle, with his pre-teen son on the rear carrier of the bike, both wearing helmets, in an effort to get his son on board the 701 express bus.
- [21] The Councillor's child had an event to attend across town and the Councillor intended to have his son take the bus there.
- [22] The Councillor headed north on University, then crossed the intersection at Brock and headed west along Brock to catch the bus at Brock and Alfred. As he rode along Brock, the bus pulled into the Alfred Street bus stop. It was 2:47 pm.
- [23] The City of Kingston Transit Department has worked hard over the past decade to improve the reliability and customer service of its operations. Kingston Transit invites users to bring scheduling issues to their attention using the website.

[24] The website provides as follows:

Respect is a mutual thing

Kingston Transit is committed to providing a safe trip for our riders and a safe working environment for our bus operators. We ask that you treat our bus operators and buses with respect.

Our bus operators do their best to ensure that passengers arrive at their destinations safely and on time. However, road construction, inclement weather or traffic congestion may occasionally impact route schedules.

Your patience and understanding during these circumstances are appreciated.

While there are a number of reasons why a bus may be behind or ahead of schedule (for example, traffic, the number of passengers getting on and off, construction, etc.), Kingston Transit makes every effort to stay on schedule and get passengers to their destinations on time.

If you have experienced delays in your travels, let us know by filling out a service request form.

Report a bus that was late, early, or did not arrive

Please provide the following information when filling out the form:

Whether the bus was late, early, or did not arrive,

The date and time you tried to board the bus,

The route number on the front of the bus, and

The stop where this happened.

[25] Like many of the transit buses, the afternoon express bus Sunday was equipped with at least 4 video cameras. The video displays a digital 24 hour clock, and records an audio track of dialogue picked up in the vicinity of the driver's seat.

[26] The 701-2 express bus has a scheduled departure time from the Bath and Alfred stop of 2:48 pm. (14:48:00)

[27] Bus schedules account for less than a minute – only a few seconds actually - for passengers to climb aboard or disembark. The schedule allows 37 minutes for the 701 express bus to complete the route from King's Crossing Centre to Catarauqui Centre. There are 19 stops. On a good day, everything runs like clockwork.

[28] At 14:47:48 a single passenger disembarked the bus from the rear door at the Alfred stop.

[29] Brock Street is a one-way street, running westbound, with two lanes of traffic along this section. Between the curb and the traffic lanes, there is a bike lane. The bike lane is delineated by a double white line, and the separation from vehicular traffic is punctuated by bollards placed within the double white line at regular intervals.

[30] There is a bollard about 30' past the bus stop at Brock and Alfred.

Principles
Integrity

- [31] As the Councillor approached the bus, which was standing at the bus stop letting passengers exit, and with his son on the back rack of his bike, the Councillor rode out of the bike lane and entered into the first traffic lane to come up behind the bus on the driver's side of the vehicle. He then cut across in front of the bus and he came to a stop in the bike lane, beside the first bollard past the bus stop, some 30' ahead of the bus.
- [32] Dismounting quickly while still coming to a stop, the Councillor turned around to face the bus, raising his hand as he turned, but the bus had already begun to pull away from the bus stop. It was 14:47:55.
- [33] The Councillor's son climbed down off the bike carrier, and watched as the bus drove past him. He then mounted his bike, his son hopped back onto the bike rack, and he started riding along Brock Street again.
- [34] The next bus stop is Victoria Street. The bus arrived at 14:48:35 but no passengers got on or off.
- [35] The next stop is Regent Street. The bus arrived at 14:49:58 and four passengers got off.
- [36] The route then turns north at Palace Rd. The next stop is 324 Palace Rd. The bus stopped at the Palace Rd stop at 14:50:58 and three passengers got on.
- [37] When it reached Bath Rd., it turned westbound again, with the next stop being Bath Rd. at Kingston Centre. The bus stopped at the Kingston Centre stop at 14:53:28 and six passengers got on, and eight got off. At 14:54:02 the bus pulled away and merged with traffic westbound along Bath Road.
- [38] This section of Bath Road consists of four westbound lanes: a right-turn lane, two centre lanes, and a left-turn lane. There is no designated bike lane.
- [39] At 14:54:21 the bus pulled to a stop in the second lane, two cars back from a red light at the signalized intersection at Sir John A. MacDonald Blvd. At this moment, the Councillor – having cut across a park – caught up with the bus, riding in the right-turn lane. He pulled in front of the bus at 14:54:38 and dismounted his bike, placing it on its kickstand immediately in front of the bus in the lane of traffic.
- [40] The driver waved her arms, waving him off, but he ignored her, and gestured to her window, then to his iPhone. He proceeded to tap on the windshield, and from the bus video appears to be yelling at her, demanding she let his son on the bus, then with his fist, banged three times on the windshield, demanding she open the door. He then started taking pictures of her with his iPhone.

Principles
Integrity

- [41] His son stood by the bus, on the line between the right-turn lane and the second lane.
- [42] Meanwhile, the driver had contacted her Supervisor by two-way radio to advise of the incident. The driver believed the rider was demanding to be allowed to place his bike on the bus bike rack and get on the bus.
- [43] With the bus standing in the travelling lane, the driver concluded that she could not safely open the bus doors to allow passengers on or off.
- [44] With the Councillor and his bike directly in front of her bus, she could not move forward.
- [45] The Supervisor notified the driver that she would meet her at that location, and set out to meet the bus, to try to de-escalate and resolve the confrontation.
- [46] Almost 9 minutes later, at 15:03:15 the Councillor climbed back on his bike and continued with his son along Bath Rd. towards the next bus stop at Portsmouth.
- [47] Mindful of the potential for unknown risks, based on the behaviour already exhibited, the Supervisor advised the driver not to open the doors at the next stop, and to let passengers off only if it was safe to do so.
- [48] As the bus pulled into the Bath stop at Portsmouth at 15:05:00, the driver could see the him waiting, along with two other passengers. She cautiously allowed passengers to disembark by the rear door, but did not open the front door to allow passenger entry.
- [49] At 15:07:10 (3:07) the Councillor mounted his bike with his son and rode away.
- [50] What the driver did not know was that, while standing in front of the bus to block its movement in the lane of traffic, the Councillor had called the Acting City Manager on his iPhone, to report that the express bus had left the bus stop early, denying his son entry.
- [51] The Councillor reached the Acting City Manager on this Sunday afternoon in June as she was driving along in her car miles from Kingston.
- [52] She advised the Councillor that she would look into the situation and would get back to him. She did not realize he was standing in front of the bus blocking its passage.
- [53] The Acting City Manager called the relevant Commissioner at home and advised her of the issue, who then contacted the Director of Transit, who contacted the Operations Manager, who contacted the Supervisor on duty.

Principles
Integrity

- [54] It is remarkable, and a credit to Kingston staff and the chain of command, that the call to the Acting City Manager was placed by the Councillor at 2:58 pm and by 3:07 pm – less than 9 minutes later - the Operations Manager had notified the Supervisor.
- [55] Incident Reports were completed following the driver's shift and, the next morning, immediately following a review of the video by management, a decision was made to refer the incident to the Kingston Police.

Transit Policies Followed by Staff

- [56] Kingston Transit is a modern, progressive operation with robust safety and emergency response policies and procedures to protect the public and its 150 operators.
- [57] Pursuant to those policies and procedures, when a bus operator feels that an incident poses a threat, the operator may request assistance from Transit Operations Centre using the 2-way radio system.
- [58] Depending on the nature of the emergency, the matter may be escalated by calling 911 to coordinate an emergency response.
- [59] When the driver found herself blocked by the Councillor in the second lane, two cars back from a red light at the signalized intersection at Sir John A. MacDonald Blvd, the operator of express bus 701 used her 2-way radio to contact Transit Operations Centre.
- [60] She spoke with her Supervisor and advised of the situation: that a cyclist was blocking her passage, in a live lane of traffic, attempting to board, but that it was unsafe to open the doors as she was in the traffic lane.
- [61] Although the bus operator had no idea at the time that the cyclist was the Councillor, she advised that she did not require Police assistance.
- [62] *Standard Operating Procedure "Safety – Managing Threats, Assaults or Potential Assaults"*, provides as follows:

Step 6

Separate or Remove Threat

- a) The Bus Operator, if possible, will separate or remove themselves from the threat. (Eg. If the threat is outside of the bus, the Bus Operator can close the doors to prevent the offender from entering).
- b) ...

Principles
Integrity

- c) If an immediate threat of life safety is present, the Bus Operator will activate a distress message.

- [63] Because the operator did not perceive the situation to give rise to an immediate threat of life safety, the matter was not escalated to the Police with a 911 call.
- [64] The operator spoke with the Supervisor, who immediately set out to the location of the bus, to assist in resolving the situation. While en route, the Supervisor spoke with the operator, and advised her not to allow the irate cyclist to board the bus. At that moment, the Supervisor was similarly unaware of the cyclist's identity as a Member of Kingston Council.
- [65] Once the situation was resolved – after the Councillor rode away on his bike – the incident was documented in an Incident Report.
- [66] The operator, having determined that she and her passengers were not in imminent danger, had not escalated the matter to a 911 call. The entire incident might simply have been documented as an unknown angry cyclist aggressively blocking a bus in traffic for a few minutes on a Sunday afternoon before backing down, going on his way and letting it proceed.
- [67] However, the Councillor's call to the Acting City Manager as he stood in front of the bus seeking immediate intervention, presumably to have someone in a position of authority command the driver to open the bus doors, had revealed his identity.
- [68] Within hours, when senior management staff reviewed the transit video of the incident, the decision was made to involve the Police.
- [69] While this would be a normal follow-up if the Police had been involved through emergency response, it does not follow that it was the only, or even the preferred, follow-up under the circumstances.
- [70] Knowing that the irate cyclist was actually a Member of Council presented staff and the public with recourse to deal with the Councillor through the mechanism of the Integrity Commissioner.
- [71] If a similar incident occurred and unfolded in the same manner, involving an employee of the City of Kingston, it is doubtful that senior management would have referred the matter to the Police the next morning before engaging in some communication with either the employee - whose bizarre behaviour manifested itself in front of the bus - or with his/her supervisor to determine what other steps might appropriately be pursued, before forwarding the incident to the Police for follow-up.

Principles *Integrity*

- [72] Members of Council do not have a 'supervisor'. However, the Integrity Commissioner occupies a statutory office required by the Municipal Act which is available to all members of the public including staff, to be called upon to act in an oversight role with regard to the conduct and behaviour of Members of Council, to bring to their attention actions which breach ethical expectations, to seek remedies, and to recommend consequences as appropriate.
- [73] Although the conduct and behaviour in question could be characterized as a violation of the *Criminal Code* and possibly the *Highway Traffic Act*, it represented conduct and behaviour which would certainly be subject to the Code of Conduct.
- [74] Reviewing the video, it is clear that the bus operator handled the entire event with professionalism and composure, exhibiting the utmost concern for the safety and well-being of everyone involved.
- [75] It is evident that many passengers were inconvenienced. One bystander waiting at the bus stop was almost run over and had to jump out of the way when the Councillor zoomed past him on his bike, on the sidewalk in front of the bus stop.
- [76] It is also evident, reviewing the video, that the Councillor's pre-teen child – although clearly not a toddler in a bike seat, as was implied in media reports at the time – was nevertheless placed in harm's way as he stood waiting in front of the bus, between the right-turn lane and the live traffic lane, with cars passing in the turn lane between where he stood and the curb (it appeared to the bus driver that vehicles stuck behind the sitting bus chose to pass on both sides of the bus).
- [77] We find that the Councillor exhibited a callous disregard for the safety and well-being of others – including his own son – who were impacted by his actions during the event.

Inappropriate Use of Social Media

- [78] The Councillor is an avowed cyclist and transit supporter. He is also someone who uses social media to get his message out and to build his support in the community.
- [79] According to the Councillor, it has been his experience that his use of social media has resulted in the growth of his support, and he sees no downside in any of the publicity he gets.
- [80] The photo which captured the image of a police car parked blocking the bike lane was tweeted by the Councillor to protest the failure of the police to enforce the prohibition against parking in the bike lane, by illustrating that the police themselves disregard the prohibition.

Principles *Integrity*

- [81] Regardless of any explanation there might be for a police car parking in a bike lane, the Councillor has other mechanisms at his disposal with which to call attention to operational shortcomings he believes exist on Kingston Police. Two Members of Council sit on the Kingston Police Services Board, with whom the Councillor could have shared his concern, or he could have brought it to the attention of the Chief.
- [82] While Police Officers, unlike Fire & Emergency Services first responders, are not employed directly by the City of Kingston, it is likely that the public perceives Police as 'first responders working for the City'. The Councillor should treat them with the same professionalism and respect as municipal staff.
- [83] The use of social media to call attention to perceived shortcomings and errors in judgment of the Police is inappropriate in the same manner as it would be as if these were municipal staff.
- [84] Communicating the concern through appropriate channels is more likely, in our view, to result in meaningful changes in behaviour since the issue can come to the attention of management of the Police Service.
- [85] The tweet, on the other hand, is not so much a means of changing behaviours as it is of publicly criticizing police behaviour or, more accurately, the behaviour of a single police officer. It unfairly casts the entire police service in a negative light, broadcasting the critique in a public way.
- [86] While this may feel like fair comment to some, it paints the entire Police Service with a single brush. It is unfair to all those members of the Police Service who diligently respect the bike lane while serving the public. Members of the public may publicly call out public servants and emergency responders through social media, but Members of Council are in a privileged position, and as such are held to a higher standard.
- [87] While inappropriate, we do not find however that this single tweet amounts to bullying or intimidation.

Role of Integrity Commissioner When Facts Give Rise to Criminal Allegations

- [88] There has been some confusion around how to proceed when the facts which give rise to a concern about a Member of Council's conduct under the Code of Conduct also give rise to a possible criminal charge.
- [89] The Municipal Act requires that, where there are reasonable grounds to believe that there has been a contravention of any other Act or of the Criminal Code, the Integrity Commissioner, shall "*refer the matter to the appropriate authorities and*

Principles Integrity

suspend the inquiry until any resulting police investigation and charge have been finally disposed of and shall report the suspension to council”.

[90] The legislation has been interpreted by the Divisional Court¹ to clarify the powers of the Integrity Commissioner in these types of circumstances. The court has held that although the Integrity Commissioner must refer allegations of a criminal nature to the appropriate police service, and suspend investigation of those matters, the integrity commissioner retains jurisdiction. Following disposition of any criminal charges, the integrity commissioner may continue the investigation.

[91] In such circumstances, even where the criminal charges are dismissed, withdrawn, or are not proceeded on, the Integrity Commissioner may still make findings that the Code of Conduct was violated. This is because:

- the onus of proof in a criminal case (beyond a reasonable doubt) is higher than the onus of proof in a civil matter (a balance of probabilities) which applies to findings of violations of the Code of Conduct
- It may well be that police or the Crown decide not to pursue charges, yet the conduct and behaviour still constitutes a serious breach of ethical standards expected of Members of Council, and warrants public reprimand or monetary sanction
- The matter may give rise to an opportunity for relevant recommendations from the Integrity Commissioner in addition to any that might involve the imposition of a sanction on the respondent councillor, or for public education, or for a ‘clearing of the air’ should the matter have been a matter of public discussion.

[92] Finally, where a complaint contains multiple allegations, only some of which are required to be referred to the police, the Integrity Commissioner may continue to pursue the balance of the allegations – those which are not criminal in nature - and the balance of the investigation of those non-criminal matters is not suspended or held up pending the disposition of the criminal matters.

[93] In all circumstances, where inappropriate conduct or behaviour of a member of council is alleged, it is most appropriate that the complaint be made to the Integrity Commissioner. The Integrity Commissioner can then determine which aspects of the complaint are criminal in nature, on their face, and refer those to the appropriate police service, while pursuing an investigation of the balance of the complaint.

[94] Such a process recognizes that public resources supporting the administration of justice are scarce, and where warranted an administrative law solution is more appropriate than involving an over-burdened court system. It also recognizes that a more timely outcome better serves the public interest.

¹ Michael Di Biase v. City of Vaughan, 2016 ONSC 5620, Divisional Court, pg.28, paras.194-221

Principles *Integrity*

[95] In this regard, we will be recommending an amendment to the City of Kingston Code of Conduct Complaint Protocol, to clarify this.

Disposition of the Criminal Charges

[96] The charges laid by the Police against the Councillor arising out of the bus incident in June were disposed of in the fall under the Direct Accountability Program run by the Salvation Army –the ‘diversion’ program.

[97] The Councillor paid \$200 to the Salvation Army, in lieu of performing community service, and provided a letter of apology to the bus operator.

[98] The letter of apology to the bus operator, for which purpose the Police provided the Councillor with the operator’s identity, was placed on file with the diversion program.

[99] Unfortunately, through no fault of the Councillor, the letter of apology never made its way to the bus operator, nor to anyone else at Kingston Transit.

[100] While a heartfelt, sincere, timely apology can bring meaningful resolution and closure to a difficult situation, in our view, the letter of apology provided by the Councillor fails to grasp the seriousness of the incident or the egregiousness of his behaviour. In our view, the apology was neither timely nor heartfelt.

[101] Worse, the apology was never provided to the bus operator, but simply sat in a file following disposition of the charges. So while the press and social media chatted about an apology, the bus operator – and those watching over at Kingston Transit – were puzzled and skeptical.

[102] The advantage of a diversion program is that it allows a minor matter to be resolved quietly, off the radar, in a manner that saves time and money. However, in light of the publicity around the incident, and the position held by the Councillor, it lacks any meaningful closure where the public can observe meaningful acknowledgment and accountability on the part of the Councillor.

[103] A more preferable outcome would in our view have had a more direct impact on the persons affected, such as a direct apology, and community service related to bus operations.

[104] This report, although stirring up feelings around an incident that the Councillor and the bus operator, along with senior management, would all prefer to put behind them, will allow the Councillor to be held accountable and will give the public closure around the incident.

Principles *Integrity*

[105] We hope it will also give the Councillor reason to pause and to reflect on his impulses before he acts on them - whether in regard to protesting perceived wrongs or communicating about them through social media.

Conclusions and Recommendation

[106] An Integrity Commissioner's investigation report is not simply the conclusion of a technical exercise to determine whether there has been a breach of codified standards of behaviour.

[107] Our role is more than simply the task of bringing adjudication to grievances between individuals. As noted at the outset, we see as our highest objective in reporting out on an investigation to be the making of recommendations that serve the public interest.

[108] In this regard, the Integrity Commissioner's recommendations may include a reprimand, appropriate remedial actions or a monetary sanction of up to 90-days suspension of pay.

[109] The purpose of a sanction is to reinforce Council's ethical framework. In other words, the Code of Conduct must have 'teeth'.

[110] Although a monetary penalty is not remedial, it can serve as a deterrent, sending a message that the behaviour falls below the standard expected of the community's elected representatives.

[111] In the events described in this report we have found Councillor Stroud's conduct and behaviour was completely out of keeping with behaviours expected of Members of Council. Given the impact on the driver, for the passengers on the bus, and the blatant disregard for the safety and well-being of others including his own son, we recommend that a significant monetary sanction be imposed.

[112] We therefore recommend:

1. That Council pass the following resolution:

That having been found to have breached the City of Kingston Council Code of Conduct, Councillor Stroud's pay be suspended for a period of 30 days.

2. And that this report be posted on the City's web site for public access.

[113] We wish to conclude by publicly thanking everyone who participated in our investigation.